

85th Legislative Session – 2010

Committee: House Judiciary

Monday, February 01, 2010

P - Present
E - Excused
A - Absent

Roll Call

P Engels
P Feinstein
P Gibson
P Gosch
P Hamiel
P Hoffman
P Hunt, Vice-Chair
P Killer
P Lust
P Moser
P Schlekeway
P Turbiville
P Cutler, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Chair Joni Cutler.

MOTION: TO APPROVE THE MINUTES OF WEDNESDAY, JANUARY 27TH, 2010.

Moved by: Turbiville
Second by: Gosch
Action: Prevailed by voice vote.

HB 1109: revise certain provisions of the Uniform Limited Liability Company Act.

Presented by: Representative David Lust
Proponents: Tom Barnett, State Bar Association of South Dakota
Teresa Bray, Office of the Secretary of State

MOTION: AMEND HB 1109

1109ja

On page 12, after line 5 of the printed bill, insert:

" Section 14. That chapter 47-34A be amended by adding thereto a NEW SECTION to read as follows:

A member or manager of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon such information, opinions, reports, or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid."

Moved by: Moser
Second by: Turbiville
Action: Prevailed by voice vote.

MOTION: AMEND HB 1109

1109jb

On page 6, line 17, of the printed bill, delete everything after "a" and insert "certificate of existence or a record of similar import authentication by the secretary of state or other official having custody of company records in the state or country under whose law it is organized together with any fee required by § 47-34A-1206 and any other required fee."

On page 6, delete lines 18 to 20, inclusive.

On page 10, line 10, delete "certificate" and insert "plan".

On page 12, after line 5, insert:

" Section 14. That § 47-34A-1206 be amended to read as follows:

47-34A-1206. The secretary of state may charge the following fees:

- (a) For amending or restating the articles of organization in the case of a domestic limited liability company, a filing fee of sixty dollars. For amending the registration in the case of a foreign limited liability company, a filing fee of seven hundred fifty dollars;
- (b) For filing articles of termination, ten dollars;
- (c) For filing articles of merger, sixty dollars;
- (d) For filing a statement of dissociation, ten dollars;
- (e) For filing an application to reserve a name, twenty-five dollars;
- (f) For issuing a certificate of existence, twenty dollars;
- (g) For filing an application for registration of name, twenty-five dollars;
- (h) For filing an annual renewal of registration, a limited liability company which has in effect a registration of its name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of fifteen dollars. A renewal application may be filed between the first day of October and the thirty-first day of December in each year and shall extend the registration for the following year;
- (i) For acting as agent for service of process the secretary of state shall charge and collect at the time of such service thirty dollars which may be recoverable as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action;
- (j) For filing articles of domestication, one hundred fifty dollars;
- (k) For filing articles of organization surrender, one hundred fifty dollars;
- (l) For filing a plan of conversion, one hundred fifty dollars."

Moved by: Schlekeway
Second by: Gibson
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1109 AS AMENDED

Moved by: Turbiville
Second by: Gibson
Action: Prevailed by roll call vote. (12-0-1-0)

Voting Yes: Feinstein, Gibson, Gosch, Hamiel, Hoffman, Hunt, Killer, Lust, Moser, Schlekeway, Turbiville, Cutler

Excused: Engels

MOTION: AMEND TITLE OF HB 1109

1109rta

On page 1, line 2, of the printed bill, after "Act" insert "and to provide for certain filing fees relevant thereto".

Moved by: Gibson
Second by: Hunt
Action: Prevailed by voice vote.

HB 1081: revise certain court automation surcharges and to declare an emergency.

Presented by: David Gilbertson, Chief Justice
Patricia Duggan, Unified Judicial System (Handouts: #1, #2)
Proponents: Tom Barnett, State Bar Association of South Dakota
Opponents: Ron Olinger, SD Retailers Association
Drew Duncan, Collectors Association

MOTION: AMEND HB 1081

1081ja

On page 2, between lines 19 and 20 of the printed bill, insert:

" Section 4. After June 30, 2015, notwithstanding § 16-2-39, in each small claims action, the clerk of courts shall collect as a unified judicial system court automation surcharge the sum of six dollars if the amount in controversy is less than four thousand dollars and eight dollars if the amount in controversy is four thousand dollars or more."

Moved by: Hunt

Second by: Engels
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1081 AS AMENDED

Moved by: Hunt
Second by: Moser
Action: Prevailed by roll call vote. (13-0-0-0)

Voting Yes: Engels, Feinstein, Gibson, Gosch, Hamiel, Hoffman, Hunt, Killer, Lust, Moser, Schlekeway, Turbiville, Cutler

HB 1073: clarify certain provisions relating to a court's continuing jurisdiction to revoke probation or a suspended execution of sentence.

Presented by: Greg Sattizahn, Unified Judicial System
Proponents: Laurie Feiler, Department of Corrections

MOTION: AMEND HB 1073

1073ra

On page 1, after line 6 of the printed bill, insert:

"

Section 2. That § 23A-27-18 be amended to read as follows:

23A-27-18. Upon conviction, the sentencing court ~~having jurisdiction to try the offense~~ may suspend the execution of any sentence imposed during good behavior, subject to such conditions or restitutions as the court may impose. The suspension order or judgment can be made only by the court in which the conviction occurred. A defendant given a suspended execution of sentence shall remain under the jurisdiction of the court. A penitentiary sentence may be imposed as a condition of a suspended execution of sentence as authorized in § 23A-27-18.1.

Section 3. That chapter 23A-27 be amended by adding thereto a NEW SECTION to read as follows:

Upon conviction, the sentencing court may suspend any portion of a penitentiary sentence subject to conditions or restrictions as the court may impose. The suspension order or judgment can be made only in the court in which the conviction occurred. A defendant with a partially suspended penitentiary sentence is under the supervision of the Department of Corrections and the Board of Pardons and Paroles. The board is charged with the responsibility for enforcing the conditions

imposed by the sentencing judge, and the board retains jurisdiction to revoke the suspended portion of the sentence for violation of the terms of parole or the terms of the suspension.

A defendant with an entirely suspended penitentiary sentence is under the supervision of the sentencing court unless the entirely suspended penitentiary sentence is concurrent or consecutive to an additional penitentiary sentence in which case, the defendant is under the supervision of the Board of Pardons and Paroles.

Section 4. That § 23A-27-18.2 be amended to read as follows:

23A-27-18.2. A person who is sentenced to a county jail as a condition of suspended imposition of sentence, suspended sentence, or suspended execution of sentence, is under the supervision of the court services officer assigned by the court having jurisdiction of the person. A person sentenced to the state penitentiary as a condition of suspended imposition of sentence or suspended execution of sentence is under the supervision of the court services officer assigned by the court having jurisdiction of the person upon that persons's release from the state penitentiary after completion of the penitentiary term imposed pursuant to § 23A-27-18.1.

Section 5. That § 23A-27-19 be amended to read as follows:

23A-27-19. ~~A court which may suspend sentence under § 23A-27-18~~ The sentencing court retains jurisdiction for the purpose of suspending any such sentence for a period of two years from the effective date of the judgment of conviction, notwithstanding the fact that the time for an appeal from such judgment is limited to a shorter period of time. The court shall notify the attorney who prosecuted such person or shall notify the successor in office of such attorney at least fourteen days in advance of such suspension. Such notice shall be provided any victim by such attorney pursuant to the provisions of § 23A-27-1.2. Any person whose sentence is suspended pursuant to this section is under the supervision of the Board of Pardons and Paroles, except as provided in § 23A-27-18.2. The board is charged with the responsibility for enforcing the conditions imposed by the sentencing judge, and the board retains jurisdiction to revoke the suspended portion of the sentence for violation of the terms of the suspension."

Moved by: Engels
Second by: Feinstein
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1073 AS AMENDED

Moved by: Moser
Second by: Gibson
Action: Prevailed by roll call vote. (13-0-0-0)

Voting Yes: Engels, Feinstein, Gibson, Gosch, Hamiel, Hoffman, Hunt, Killer, Lust, Moser, Schlekeway, Turbiville, Cutler

HB 1074: allow copies of juvenile files to be provided to certain named parties or by court order rather than limiting use to inspection of the file only.

Presented by: Greg Sattizahn, Unified Judicial System

MOTION: DO PASS HB 1074

Moved by: Hoffman
Second by: Gosch
Action: Prevailed by roll call vote. (13-0-0-0)

Voting Yes: Engels, Feinstein, Gibson, Gosch, Hamiel, Hoffman, Hunt, Killer, Lust, Moser, Schlekeway, Turbiville, Cutler

MOTION: PLACE HB 1074 ON CONSENT CALENDAR

Moved by: Gosch
Second by: Gibson
Action: Prevailed by voice vote.

HB 1075: revise certain provisions relating to credit against unpaid fines and costs for time served and to disallow credit for time served against unpaid victim restitution.

Presented by: Greg Sattizahn, Unified Judicial System

MOTION: DO PASS HB 1075

Moved by: Engels
Second by: Hoffman
Action: Prevailed by roll call vote. (13-0-0-0)

Voting Yes: Engels, Feinstein, Gibson, Gosch, Hamiel, Hoffman, Hunt, Killer, Lust, Moser, Schlekeway, Turbiville, Cutler

MOTION: PLACE HB 1075 ON CONSENT CALENDAR

Moved by: Feinstein
Second by: Gosch

Action: Prevailed by voice vote.

HB 1076: repeal certain statutes related to the testimony of sex offense victims and to evidence of a victim's prior sexual conduct.

Presented by: Greg Sattizahn, Unified Judicial System

Proponents: Dianna Miller, SD Network Against Family Violence & Sexual Assault
Thomas Barnett Jr., SD State Bar

MOTION: AMEND HB 1076

1076rb

On page 1, after line 14 of the printed bill, insert:

" Section 3. The provisions of this Act are not effective unless, prior to the effective date of this Act, the Supreme Court adopts a new rule substantially equivalent to federal rule of evidence 412 and provides that the rule becomes effective upon the legislative repeal of §§ 23A-22-15 and 23A-22-15.1."

Moved by: Hunt

Second by: Schlekeway

Action: Prevailed by voice vote.

MOTION: DO PASS HB 1076 AS AMENDED

Moved by: Gosch

Second by: Gibson

Action: Prevailed by roll call vote. (13-0-0-0)

Voting Yes: Engels, Feinstein, Gibson, Gosch, Hamiel, Hoffman, Hunt, Killer, Lust, Moser, Schlekeway, Turbiville, Cutler

MOTION: AMEND TITLE OF HB 1076

1076rta

On page 1, line 2, of the printed bill, after "conduct" insert "in coordination with the adoption of certain evidentiary rules by the Supreme Court".

Moved by: Hunt
Second by: Schlekeway
Action: Prevailed by voice vote.

MOTION: PLACE HB 1076 ON CONSENT CALENDAR

Moved by: Gosch
Second by: Turbiville
Action: Prevailed by voice vote.

HB 1077: enact a procedure for delayed appeal if the petitioner was unconstitutionally denied the right of appeal.

Presented by: Greg Sattizahn, Unified Judicial System

MOTION: AMEND HB 1077

1077ra

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. That chapter 21-27 be amended by adding thereto a NEW SECTION to read as follows:

If the court finds that an applicant was denied the right to an appeal from an original conviction in violation of the Constitution of the United States or the Constitution of South Dakota, the court shall vacate and set the judgment aside if such relief is requested within a reasonable time and an adequate record of the original trial proceeding is available for review. The court shall impose the same sentence and advise the applicant of the following:

- (1) The rights associated with an appeal from a criminal conviction; and
- (2) The time for filing a notice of appeal from the reimposed sentence."

Moved by: Turbiville
Second by: Gosch
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1077 AS AMENDED

Moved by: Turbiville
Second by: Gosch
Action: Prevailed by roll call vote. (12-1-0-0)

Voting Yes: Engels, Feinstein, Gibson, Gosch, Hamiel, Hoffman, Hunt, Killer, Moser, Schlekeway, Turbiville, Cutler

Voting No: Lust

THE CHAIR DEFERRED HB 1078, HB 1079, HB 1080 UNTIL WEDNESDAY, FEBRUARY 3, 2010.

MOTION: ADJOURN

Moved by: Turbiville
Second by: Schlekeway
Action: Prevailed by voice vote.

Linda Dugaard
Committee Secretary

Joni M. Cutler, Chair